

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED

JUN 11 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

No.C 07-04734 SBA (PR)

BARTH D.CAPELA,
Petitioner,

V.

BOB HOREL, Warden,
Respondant

Opposition to Court order

Petitioner request the Court to order 30 Days for Respondant to respond Per Federal Rules of Court, Rule 81-191 (i)(3) and request to Bar Respondant from further time consuming motions for procedural dismissal since there are no grounds on which to file such a motion.

On May 5, 2008 this Court ordered Respondant to show cause why the Petition should not be granted. Respondant was given (120 Days) to respond, four times the normal amount listed in the Federal Rules of Court. Although the Court does have discretion to grant extensions, the Respondant never ask for one by filing a motion. The Court without a request automatically granted three 30 Day extensions from the start. Petitioner is well aware of Attorney General's possible heavy case load. But on the other hand the Attorney General has unlimited resources compared to petitioner. Petitioner also feels he has been wrongly convicted and even one day spent in Prison is unjustified. For the Court to automatically give Respondant four times the normal amount of time to respond, suggest Bias to where an average person would feel his Petition has no chance of a fair review.

The Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 cases, list four reasons for procedural error motions. (1) Petitioner failed to exhaust. (2) The merits have already been decided in Federal Court. (3) Petitioner is not in custody. (4) Or that a decision in the matter is pending in a State Court. Since none of these reasons exist in Petitioner's case, he respectfully request the Court to Bar Respondant from filing a frivolous motion to dismiss on procedural grounds since in doing so would only cause further delays.

PROOF OF SERVICE

BARTH D. CAPELA,
Petitioner


V.

BOB HOREL, Warden,
Respondant

I, the undersigned, hereby certify that I am the Petitioner in this case,
in the United States District Court for the Northern District of California.

That on June 8, 2008, I served a true copy of the attached, by placing said copy
in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the U.S. mail, by placing said copies into the
mail box here at Solano Prison.

Office of the Attorney General
455 Golden Gate Avenue Suite 11,000
San Francisco, Ca. 94102-7004


Barth D. Capela, Petitioner